

SEP 14 1988

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The purpose of your not for profit organization as stated in your Articles of Incorporation is to provide, by cooperative effort for artists in a wide geographical area, and for member artists, a forum in which to exhibit their art, without the commercial pressure of having to sell art in order to keep the gallery open. To be able to collectively acquire and use certain equipment, studio and gallery space which may be too expensive for individual artists to acquire and maintain by themselves. To work with the community to promote fine art to the public.

Your activities as stated in your Form 1023 application and its attachments are to promote art; provide "networking"; lectures and tours to educate the public and encourage aspiring artists; provide a newsletter to promote the gallery and its member's work; workshops by gallery members; and working with young people within the public school system to show various art methods, possibilities of careers, and art as a creative outlet.

A primary activity of your organization is the operation of a cooperative art gallery by its members. The gallery provides an outlet for the exhibiting and selling of the member's art. In addition studio space is rented to member artists as space is available. You have a sales tax registration certificate from the State of [REDACTED] and collect sales tax on gallery sales. The gallery accepts consignment sales with the commission set at [REDACTED] percent of the sale. Commission on member sales is set at [REDACTED] percent. In addition, you indicate a [REDACTED] percent discount may be given to interior designers and decorators with [REDACTED] percent to be absorbed by the gallery and [REDACTED] percent by the artist whose work is discounted. You provide a layaway plan for the purchase of art works.

The gallery has regular operating hours and scheduling of gallery attendants. You provide specific guidelines for this operation of the gallery sales procedures and the responsibility at the member attendants.

Code	Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
		[REDACTED]					
Surname		[REDACTED]					
Date		9-14-88					

[REDACTED]

This is a membership organization and new members are selected based on the quality of their work, compatibility with existing members, and the approval of three-fourths of the active members. New members must also sign a contract of membership agreement. Membership fees have been set at \$[REDACTED] per year per member.

Your income statement for the period ending [REDACTED], shows that your income was derived from membership fees, commissions on sales of art, and fees from the rental of studio space. The expenditures are primarily for the operation, promotion, and maintenance of the gallery.

Section 501(c)(3) of the Code provides exemption for:

"Corporations...organized and operated exclusively for religious, charitable,...or educational purposes,...no part of the net earnings of which inures to the benefit of any private shareholder or individual..."

Section 1.501(c)(3)-1 of the regulations provides, in part, as follows:

"(a) (1) In order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt."

"(b)(1)(i) An organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

(a) Limit the purposes of such organization to one or more exempt purposes; and

(b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes."

"(c)(1) Primary activities. An organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

"(d)(1)(ii) An organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated

individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Revenue Ruling 71-395, 1971-2 C.B. 228, describes a cooperative art gallery formed and operated by a group of artists to exhibit and sell their works. The gallery showed and sold the works of its members and retained a commission on each sale. The ruling concluded that the gallery was a vehicle for advancing the careers and promoting the sales of its members, and therefore not exempt.

Revenue Ruling 76-152, 1976-1 C.B. 152, held that a nonprofit organization of art patrons promoting community understanding of modern art by selecting, exhibiting and selling art work of local artists was not exempt. The organization retained a commission on sales less than normal commercial charges. The reason for denying exemption was that the major activity of the organization served the private interests of the artists.

Your primary activities resemble those described in the above revenue rulings in that you are a cooperative art gallery formed and operated by a group of artists to exhibit and sell their works. The gallery is a vehicle for advancing the careers of your members. In addition, you sell on consignment the work of other artists.

In considering whether you qualify under section 501(c)(3), we acknowledge that some of your activities further charitable and educational purposes within the meaning of section 501(c)(3). Among these are:

- (1) Your gallery is open to the public on a regular basis and no admission fee is charged.
- (2) Your member artists do provide an educational benefit by working with young people within the school system.
- (3) Your art works are on display for public viewing.

In your case, however, these activities are viewed as incidental to your primary purpose, which is serving the private interests of your members. As was the case in both Revenue Ruling 71-395 and 76-152, your member artists are being directly benefited by the exhibition and sale of their works, with the result that a major activity of your organization is serving the private interests of those members whose works are displayed for sale. To qualify for exemption under section 501(c)(3) an organization must be operated for public rather than private interests.

Accordingly, your organization is not operated exclusively for educational or charitable purposes and does not qualify for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code. You are required to file Federal income tax returns on Form 1120.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

[REDACTED]

If you do not agree with these conclusions, you may, within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest. The enclosed Publication 892 gives instructions for filing a protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you do not protest this proposed determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Internal Revenue Code provides in part that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Court of Claims, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

If this determination letter becomes a final determination, we will notify the appropriate State Officials, as required by section 6104(c) of the Code, that based on the information we have, we are unable to recognize you as an organization of the type described in Code section 501(c)(3).

If you have any further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018